persons misappropriated this money and no evidence that accused wilfully suffered them to do so.

There is no doubt that a great deal of the responsibility for what has happened in this office must be borne by the persons appointing the accused to it. He is a man of military training with very little experience of handling or accounting for big sums of money, and seems to have been appointed to the office on the ground that he was the only Malay military officer available, though it is difficult to see why the work could not have been done by a competent accountant.

The checks on the handling of money in the office and on the accounting appear to have been non-existent. No record was kept of what actual money there was in the safe day by day nor was any unpaid balances placed therein docketed with the reference of the acquittance rolls they were meant to cover. There appears also to have been no Treasury supervision by means of surprise surveys of the monies held by the Johore Records Officer.

It is essential before criminality can attach to the non-accounting of sums entrusted to a Government servant that there should be some evidence leading to the unmistakable inference that the non-accounting covered a deliberate misappropriation by the trustee. The doctrine of criminal negligence has not, as far as I have been able to discover, ever been applied to a negligence which has resulted in the loss of trust money by a person entrusted with it or its misappropriation by others through his negligence. I am therefore in this case compelled to hold that, though the accused was grossly careless in the handling of this money and the administration of his office, I cannot find evidence that he was dishonest therein to the extent of misappropriating the money or that he wilfully suffered others to do so.

I am strongly of opinion that this is a matter which should be investigated further under the provisions of the Government's General Orders and that the accused if found to have been at fault in the light of those investigations should suffer the punishments set down therein.

I therefore acquit the accused of the charge of this criminal breach of trust.

Accused acquitted.

SINNATHAMBY v. PUBLIC PROSECUTOR.

[A. Cr. J. (Thomson J.) November 10, 1948]

[Ipoh — Criminal Appeal No. 79 of 1948]

Penal Code, s. 408 — Criminal breach of trust a servant —Meaning of "entrusted."

The appellant in this case was an employee of the Public Works Department. He was convicted of criminal breach of trust of stone from a P.W.D. quarry. One of the grounds of appeal was that there was no evidence that the appellant was in fact entrusted with any sort of dominion over the stone.

Held: s. 408 of the Penal Code applies not merely in cases where the exercise of possession of dominion over property is one of the legal incidents of the contract of service but in every case where by virtue of the existence of the contract of service the accused person is in fact in a position to exercise dominion.

MAGISTRATE'S CRIMINAL APPEAL.

M. S. Mahendran for the appellant.

C. H. Whitton (Solicitor-General) for the respondent.

Thomson J. : — The appellant in this case was charged in the Court of the District Judge at Parit Buntar with criminal breach of trust in contravention of section 408 of the Penal Code. There were also two alternative charges against him with which this Court is not concerned. On the first charge he was found guilty and sentenced to three months r.i. and a fine of $500, with an additional three months r.i. in default of payment. It is against that conviction and sentence he now appeals.

Briefly, the facts alleged by the prosecution and which the learned District Judge found to have been proved were, first, that the accused was an employee of the Public Works Department at Bagan Serai and as such was entrusted with dominion over stone from the Public Works Department Quarry at Semmangol, and, second, that on the 20th of April, 1948, while so employed, he caused about three cubic yards of 1½" stone from Semmangol Quarry to be deposited in a spot from which it was later removed on behalf of a Chinese contractor from whom he had received a sum of $10.

The appeal is based on the ground that the decision of the learned District Judge was against the weight of the evidence, and in this connection it was argued, firstly, that the evidence as to the identity of the stone was unsatisfactory, secondly, that there was

nothing to justify the learned District Judge in treating the evidence of the prosecution witnesses Teoh Ah Chai and Teoh Ah Teck as untruthful and, thirdly, that there was no evidence that the appellant was in effect entrusted with any sort of dominion over the stone.

On all these matters I am satisfied there was ample evidence to support the conclusions at which the learned District Judge arrived, and I see no reason to interfere with his findings on any one of them.

As regards the identity of the stone in question, there was the evidence of persons who were accustomed to deal with it and who said they recognised it, and in addition there was the evidence of the lorry driver who collected it from the quarry and who deposited it at the spot where traces of it were subsequently found.

As regards the truthfulness or untruthfulness of the witnesses Teoh Ah Chai and Teoh Ah Teck, the learned District Judge had the benefit of observing their demeanour and of listening to their evidence. He has weighed their evidence with some care against the other evidence in the case, and I can discover no reason for quarrelling with him for rejecting it.

As regards the question as to whether the appellant was in fact entrusted with dominion over the stone, it is necessary to consider the exact wording of the section of the Code the relevant portions of which reads as follows :—

> Whoever, being . . . . employed as a clerk or servant, and being in any manner entrusted in such capacity with . . . . dominion over property, commits criminal breach of trust in respect of that property, shall be punished.

So far as I have been able to advise myself, no direct authority exists on the point, and I take the view that the section applies not merely in cases where the exercise of possession of dominion over property is one of the legal incidents of the contract of service but in every case where by virtue of the existence of the contract of service the accused person is in fact in a position to exercise dominion as in this case. The evidence of the Executive Engineer who was the appellant's official superior was to the fact that while he gave general orders for any one day as to the use of departmental lorries nevertheless circumstances might arise where any other official might amend these orders and give other orders. That being so, the learned District Judge was fully entitled to find in fact that by virtue of his contract of service, the accused was in a position to exercise dominion over the stone from the Public Works Department Quarry, and that in the particular circumstances of the present case he did exercise that dominion prior to committing the breach of trust in respect of the property over which he exercised it.

The appeal against the conviction is accordingly dismissed.

The appellant appeals against the sentence on the ground that in view of the small value of the property and in view of the fact that he is a first offender, it is excessive.

The offence of which the appellant has been convicted is a serious one and any Court which failed to recognise that would be lacking in its duty to the public. Nevertheless, I am of the opinion that the learned District Judge attached insufficient weight to the small value of the property involved. The sentence will accordingly be altered to one of one month rigorous imprisonment.

Appeal against conviction dismissed. Sentence reduced.

LLOYD, SIR HUGH v. YEAP LIAN SENG & ORS.

[C. A. (Murray-Aynsley C.J., Pretheroe Ag. C.J. (F.M.) and Brown J.) June 11, 1948]

[Singapore — Civil Appeal No. 3 of 1948]

Landlord and tenant — Contractual tenancy — Whether acceptance of rent creates contractual tenancy — Statutory tenancy — Increase of Rent (Restriction) Ordinance — Control of Rent Ordinance, 1947.

In this case the premises in question had been occupied and later requisitioned by the Air Force. Up to 31st March, 1947, the premises were occupied by Sir George Pirie as a tenant. On 30th January, 1947 the trustees of the estate of Sir Manasseh Meyer (deceased) wrote a letter to the Air Commander-in-Chief, Sir George Pirie, which the appellant alleged contained the offer of a monthly tenancy. This offer, if there had been one, was withdrawn by a letter dated 25th February, 1947 written by the solicitors for the owners. This letter preceded the purported acceptance of the alleged offer of a monthly tenancy which was dated 4th March 1947. After this Sir George Pirie remained in occupation and tendered rent which was accepted by the then owners. The respondents purchased the house some time before 10th September 1947. On 17th November, 1947 Sir George Pirie executed a deed by which he transferred all his right, title and interest in the premises to the present appellant. The respondents took proceedings to eject the appellant from the premises and they obtained judgment in the Court below. Against the judgment, the appellant appealed.